In the High Court of Punjab and Haryana, Chandigarh.

C.M. No.13690 of 2006 and
CWP No. 12316 of 2006

Date of Decision: 2.8.2007

Prem Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice M.M.S. Bedi.

Present: Mr. Om Pal Sharma, Advocate
for the petitioner.

Mr. Gurminder Singh, Addl. A.G., Punjab
for the respondents.

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J.S. Khehar, J.(Oral).

C.M. No.13690 of 2006.

CM is allowed. Annexures P-13 and P-14 are are taken on record subject to all just exceptions.

CWP No. 12316 of 2006.

The petitioner was inducted into the service of the Sant Hari Singh Khalsa High School, Jian Chhabewal, Hoshiarpur (hereinafter referred to as the private school), as a clerk on 22.11.1972. At the time of appointment of the petitioner, the school under reference, was an aided school, and was, therefore, regulated and entitled to the different schemes issued by the State government in connection with recognised aided

schools. The appointment of the petitioner at the hands of the private school was considered by the respondents, and was approved under the grant-in-aid scheme by a memorandum dated 1.3.1973. Consequent upon the appointment of the petitioner to the private school, the State government commenced to reimburse salary payable to the petitioner under the grant-in-aid scheme.

The State government, in furtherance of a policy decision, took over the management and the employees of the private school on 31.8.2000. The document of take over and the conditions thereof, have been placed on the record of this case as Annexure P-2. Conditions No.1 and 4 thereof are relevant for the present controversy and are, accordingly, being extracted hereunder:-

> "(1). The District Education Officer, Hoshiarpur is personally responsible to take over only that staff which is fit to be taken into Govt. service according to the norms and eligibility. It should also be ensured that all that teachers and other allied staff to be taken over is trained and qualified and only that staff is taken over which was in position on the date of Cabinet decision dated 20.10.1997 and also working in the school at the time of taken over. However, a list of the staff found suitable to be taken over is appended, but before giving them appointment it is the duty of the District Education Officer to see that all of them fulfil the requisite qualifications for recruitment to the relevant posts.
>
> (4). All the members of the staff to be taken over will be treated as fresh entrants into Govt. service and the seniority

> will be determined according to the departmental instructions contained in the letter No.726(G)-SG-6-2-73(20) dated 20.8.1973 and no benefits what so ever of the previous will be given except the pay fixation and that also as per Govt. letter No.31(ii) 2 Edu.III/78/237 dated 22.1.1981."

It is, therefore apparent, that the existing staff of the private school would be taken over subject to the condition, that the staff was suitable, as also, eligible for appointment against the posts held by them. Consequent upon the take over, the respondents by an order dated 21.9.2000 provisionally took over the entire staff of the private school with a day's break in service, for a period of six months till the eventual consideration of their claim for regular employment. Paragraph 2 of the order dated 21.9.2000, allowing provisional appointment of the staff of the private school including the petitioner, is also relevant for the present controversy. The same is, accordingly, being reproduced hereunder:-

> "2. These appointments are provisional and in case they are found unsuitable and ineligible any stage for any reason their services shall be liable to be terminated after giving 24 hours notice. The initial appointment will be further subject to the conditions that they have ever been any complaint or enquiry against them."

The entire staff of the private school, other than the petitioner, was regularised by an order dated 24.8.2001 with effect from the date of take over i.e. 31.8.2000. The petitioner's name was the sole exception, inasmuch as, he was not regularised either by the order dated 24.8.2001 or by any other order. It is, therefore, that the petitioner approached this Court

by filing the instant writ petition, claiming regularisation, as also, all consequential benefits emerging therefrom. Subsequent to the filing of the instant writ petition, the respondents passed an order dated 19.9.2006, whereby the services of the petitioner were regularised with effect from the date of take over i.e. 31.8.2000. On the issue of consequential benefits, however, the order of regularisation dated 19.9.2006 mandates, that the petitioner would not be entitled to annual increments or arrears till the passing of a Punjabi typewriting test. The relevant clause in the order of regularisation dated 19.9.2006 which denies the petitioner the aforesaid consequential benefits, is being reproduced hereunder:

> "2. That his services are regularised vide Rule 15 (B) of General and Common Conditions of Service Rules, 1994 GSR/CONCEPT/ART30.9/Amed(11)/1999 dated 23.6.1999. The employee will be entitled for annual increments and arrears only in case of passing the type test (Punjabi). It is further clarified that the appointment is against temporary post and is likely to continue. In case the employee wants to resign he will have to give a prior notice of one month or will have to deposit one month salary. If the department has any proposal for termination of his services he will be given prior notice of one month or salary for one month in lieu of that. If any disciplinary action is taken for termination of services, the condition of prior one month notice will not apply."

Since the petitioner has now been regularised, the only grievance raised by the petitioner is qua the denial of the benefits under Clause 2 of the order dated 19.9.2006, extracted hereinabove.

In order to affirm the determination rendered at the hands of the respondents in denying the petitioner consequential benefits, as have been noticed hereinabove, learned counsel for the respondents has placed reliance on a notification dated 23.6.1999, whereby the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as the 1994 Rules), were amended so as to incorporate Rule 15 therein. In fact, Rule 15 of the 1994 Rules has been relied upon to deny the aforestated benefits to the petitioner. Rule 15 of the 1994 Rules, relied upon by the learned counsel for the respondents, is being extracted hereunder:-

"15. Minimum educational and other qualifications:-

(1) No person shall be appointed by direct appointment to the post of a Clerk under the Punjab Government unless he is Matriculate in Second Division or has passed Senior Secondary Part-II Examination from recognised university or institution.

(2) The person so appointed as Clerk in terms of sub-rule (1), shall have to qualify a test in Punjabi type writing to be conducted by the Board of by the appointing authority at the speed of thirty words per minute within a period of one year from the date of his appointment.

(3) In case the person fails to qualify the said test within the period specified in sub-rule (2), he shall be allowed annual increments only with effect from the date he qualifies such test, but he shall not be paid any arrears for the period for which he could not qualify the said test."

The validity of the claim of the petitioner for all the benefits that accrued to him consequent upon his regular appointment as a clerk by the private school in 1972 after the take over of the private school by the respondents w.e.f. 31.8.2000, in our view, has to be adjudicated upon on the basis of Clauses 1 and 4 of the take over document (extracted above), as well as, in terms of Clause 2 of the provisional appointment order dated 21.9.2000 (also extracted above). We are also of the view, that the 1994 Rules and consequential Rule 15 thereof, is totally irrelevant in so far as the consideration of the claim of the petitioner is concerned. This view of ours emerges from the fact, that the petitioner came to be appointed as far back as in 1972. His appointment was approved by the State government in the year, 1973. The petitioner came to draw emoluments, part of which was disbursed by the State government, ever since his induction into the service of the private school. Thus viewed, the appointment of the petitioner against the post of clerk was complete and without any deficiency. At the juncture of take over, it was open to the respondents to deny the petitioner the right of absorption into government service, in case, he was unfit or he did not satisfy the norms of eligibility. It is apparent, that the petitioner was fit and he satisfied the aforesaid norms for the simple reason, that the petitioner's services came to be regularised with effect from the date of take over i.e. 31.8.2000, by the order dated 19.9.2006 (Annexure R-3). Statutory rules promulgated in the interregnum in the year, 1994, in our view, cannot regulate the conditions of eligibility and appointment to the post of clerk, so far as the petitioner is concerned. Even otherwise, in terms of Clause 4 of the document of take over dated 31.8.2000, the respondents agreed to pay the petitioner the emoluments which he was drawing at the time of take over

i.e. 31.8.2000. It is, therefore apparent, that the respondents acknowledged to pay the petitioner annual increments which he had drawn from the date of induction into service i.e. from the year, 1972 till the year of take over i.e. till the year, 2000. Having accepted to give the benefit of annual increments to the petitioner for the period aforementioned, it was not within the purview of the respondents to deny the petitioner annual increments under Rule 15 of the 1994 Rules on account of the fact, that the petitioner did not qualify the Punjabi typewriting test.

In view of the above, we are satisfied, that the petitioner is entitled to all consequential benefits, including annual increments, in terms of the document of take over dated 31.8.2000, and that, the denial thereof to the petitioner vide paragraph 2 of the order dated 19.9.2006, is wholly illegal and unacceptable. For the reasons recorded hereinabove, paragraph 2 of the order dated 19.9.2006 to the effect, that it denies the consequential benefits to the petitioner, is hereby set aside. The respondents are directed to calculate the entitlement of the petitioner on the issue of arrears and annual increments w.e.f. 1.9.2000, within one month from the date of receipt of a certified copy of this order, and release the same to him within a further period of one month.

Allowed in the aforesaid terms.

Order dasti on payment of usual charges.

(J.S. Khehar)
Judge.

(M.M.S. Bedi)
Judge.

02.08.2007
sk.